IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2532 OF 2005

The State of Maharashtra ..Applicant

V/s.

Mohan Atmaram Patil ..Respondent
Age : 35 years, Occu : Clerk
Tahsil Office, Alibag,
R/o.Chari, Taluka Alibag
District : Raigad

Shri.D.P.Adsule, A.P.P.
Shri.S.G.Deshmukh, advocate for respondent

CORAM : A.S.OKA, J

Date : DECEMBER 20TH, 2006

ORAL JUDGMENT

1. I have heard the learned Additional Public Prosecutor in support of this application for leave and Shri.S.G.Deshmukh appearing for the Respondent. The acquittal of the respondent is for the offences punishable under Section 7, 11, 13(1)(d) read with 13(2) of the Prevention of the Corruption Act, 1988. The order of acquittal has been mainly passed on the ground that the complainant himself did not support prosecution for establishing the demand of illegal gratificaion on the part of the

Respondent.

2. The case of the prosecution is that at the relevant time the Respondent was working as a Clerk in the office of Tahsildar at Alibag. As a public servant he was dealing with challans for renewal of hotel license. One Dinanath Chikhale, the Complainant was doing a business of running a hotel by name Hotel Pankaj. The Complainant had visited office of the Tahsildar for the purposes of renewal of his hotel license. The license was issued in the name of one Vishwanath Chikhale. Therefore, an application was made by the Complainant for correction of the name on the license.

3. On 15th December, 1999 at 12.00 noon, the complainant visited office of the Tahsildar at Alibag and filled up necessary challan for payment of renewal fee of the license. He met the Respondent accused and requested him to pass the challan by putting a seal and by signing the same. According to the complainant, at that time, the Respondent informed him that the papers were very

old and he will have to search the papers. According to the complainant, the Respondent stated that if a sum of Rs.50/- was given to him, he can obtain signature and seal over the challan. The Complainant visited the office on 17th May, 1999 and again requested the Respondent to do needful. However, the Respondent refused to do the work without the Complainant paying him a sum of Rs.50/. The complainant realised that for getting the work done he was required to pay a sum of Rs.50/- to the Respondent. He, therefore, approached Anti Corruption Bureau and lodged a complaint against the Respondent. The Police Inspector, Shri Mhatre arranged a trap. He called two panch witnesses. He took a sum of Rs.50/- from the complainant and applied anthracene powder to the said note. Necessary instructions were given to the panch witnesses. Thereafter, the entire raiding party proceeded to the Tahsildar's office. The complainant along with panch witness Sarvade went to the table of the Respondent and gave him challan and paid an amount of Rs.50/- to him by tendering the currency note to which anthracene powder was

applied. The complainant came out of the office and gave a signal to the raiding party. The raiding party immediately rushed ahead and caught hold of the Respondent. His hands were searched under ultra violet lamp. The Respondent pointed out currency note kept in his drawer. The said note was attached. When the said note and other papers on which the currency note was kept were examined under ultra violet lamp, the same had a glaring effect. The Respondent was arrested and necessary documents were taken in the custody.

4. I have perused the deposition of P.W.1 Dinanath Chikhale. In paragraphs 1 to 4 of his deposition, he has deposed about the demand made by the Respondent. He stated before the Court about the Complaint filed by him and the trap arranged by the Anti Corruption Bureau. In paragraph 4 of his deposition he stated that along with panch witness he visited Tahsildar's office at Alibag. He stated that when they reached the office, the Respondent was present. He stated that he, thereafter, kept the currency note of Rs.50/- on the table and then

went out and gave a signal to the raiding party. He stated that he was not aware as to what happened to the said amount of Rs.50/- kept by him on the table. When he was shown the currency note of Rs.50/- which was kept as Muddemal Article No.1 , he was unable to identify the same on the ground that the note was handed over by him about five to six years back. During the cross examination of the said witness, on the prayer made by the learned Additional Public Prosecutor, he was permitted to put the questions to the said witness in the nature of the cross examination. In the cross examination he denied that the Respondent had received a sum of Rs.50/- from his hand in his own hand.

5. Thus, the Complainant did not state anything about the demand made by the Respondent in presence of panch witness. He did not state that the currency note of Rs.50/- was handed over by him in the hands of the Respondent. He merely stated that the note was kept by him on the table in front of the Respondent and as instructed, he immediately came out of the office and gave a signal to the raiding party.

6. Thus, the complainant himself did not support the prosecution and did not state anything about the demand made by the Respondent when he along with the panch witness met the Respondent in Tahsildar's office. Thus, not only that demand is not proved but the Complainant did not depose that he handed over the currency note to the Respondent and that the respondent received the same. He merely stated that he kept the currency note on the table of the Respondent and he immediately came out of the office and gave a signal to the raiding party.

7. Considering the evidence of the Complainant the learned judge came to the conclusion that the presumption under Section 20 of the said Act of 1988 cannot be invoked as the demand at the time of visit of the complainant with the panch witness is not proved and even the acceptance is not re-iterated by the complainant himself. If this is the factual position, the view taken by the learned trial judge is certainly a possible view which could have been on the basis of evidence on record. Even assuming that it is possible to take another view on the basis of the same evidence, it is not possible to interfere in an appeal against the acquittal. No case is made out for grant of leave. Application is rejected.

(A.S.OKA, J.)